

REMARKS

Applicants respectfully request that the above amendments put the case in better condition for appeal. Support for the amendment to Claim 7 is found in Claim 5 as originally filed. It is therefore respectfully requested that the above amendments be entered, and the following remarks considered.

Claims 1-8, 10 and 14 remain rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Peiffer (U.S. Patent No. 4,946,916). Claims 1-5 and 14 have been cancelled, thereby obviating the rejection as it relates to these claims. The rejection is respectfully traversed as it relates to the remaining claims.

Applicants' invention, as recited in the amended claims, is generally directed to an ampholyte polymer comprising three components: a) about 20 to about 95 mol percent APTAC or MAPTAC, alone or in combination; b) about 5 to about 80 mol percent acrylic acid, methacrylic acid, AMPSA or MAMPSA, alone or in combination; and c) up to about 20 mol percent of a C₁-C₂₂ straight or branched chain alkyl acrylate or methacrylate, wherein the molecular weight of said polymer is at least about 100,000. The Examiner states that Peiffer teaches that acrylic acid, methacrylic acid, and AMPSA are functionally equivalent to sodium styrene sulfonate for the purposes of his terpolymers. Applicants note that while Peiffer may list numerous anionic components of his terpolymers, nothing in the examples supports the alleged teaching of Peiffer that all of the anionic monomers would be functionally equivalent. The Examiner concludes based upon the alleged teachings of Peiffer that "terpolymers of acrylamide, MAPTAC and either acrylic acid or methacrylic acid or acrylamido methylpropane sulfonic acid would be prima facie obvious." Applicants do not claim such a combination, however. The third component of Applicants' terpolymers is alkyl (meth)acrylate and not acrylamide as the Examiner seems to suggest. Since everything required in the claims is not disclosed or suggested in the Peiffer patent, a prima facie case of obviousness has not been presented and the rejection should be withdrawn.

One skilled in the art would recognize that acrylamide and alkyl (meth)acrylate are simply not the same thing. Acrylamide is hydrophilic, whereas alkyl (meth)acrylates are hydrophobic. The declaration evidence previously submitted by Applicants clearly compares terpolymers having a hydrophobic and hydrophilic component. The superiority of the hydrophilic component is clearly

demonstrated in this evidence. Applicants therefore take issue with the Examiner's statement that their declaration evidence is of no probative value.

The Examiner is critical of Applicants' declaratory evidence stating that the only "proper showing" would be to compare the properties of the terpolymer of acrylamide, MAPTAC, and either (meth)acrylic acid or AMPSA with a terpolymer having acrylamide, MAPTAC and sodium styrene sulfonate. As Applicants are not claiming a polymer comprising acrylamide, MAPTAC, and either (meth)acrylic acid or AMPSA terpolymer, it is submitted that such a showing would be irrelevant.

The Examiner also criticizes the declaration as allegedly not being directed to the claimed invention. More specifically, the Examiner indicates that the declaration discusses properties of compositions containing the polymer, rather than the polymer itself. As has been noted previously, Applicants' declaration evidence includes the polymer in a aqueous solution as well as in a cosmetic medium. Applicants are unaware of any case law or statutory requirement requiring them to demonstrate the properties of their polymer without that polymer being in some sort of carrier. Moreover, if the carrier is the same in comparative tests utilizing different polymers, this would clearly demonstrate the properties of one polymer as compared to another. In addition, the Examiner indicates that "Applicants have not presented claims directed to these compositions containing the polymer." Claim 10 is clearly directed to cosmetically acceptable medium containing the polymers of the present invention, so the Examiner's statement is clearly erroneous.

The Examiner was also unpersuaded by Applicants' argument that the Peiffer reference is nonanalogous art. As noted previously, the present invention is generally directed to polymers and their use in cosmetic formulations; Peiffer is clearly directed to polymers for use in industrial applications. The Examiner submits that the reference is analogous art because both the reference and the present invention are directed to polymers. While Applicants have not done a comprehensive search, there are undoubtedly hundreds and hundreds of patents directed to polymers. To suggest that all of these are analogous art is untenable.

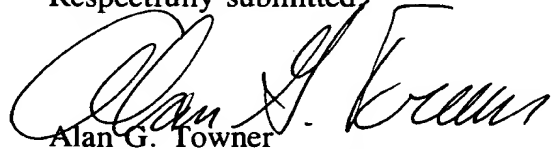
Claims 1-8, 10 and 14 also remain rejected under the judicially created doctrine of obviousness-type double patenting as allegedly being

unpatentable over the claims of Patent No. 5,879,670. Applicants submit herewith a Terminal Disclaimer obviating the obviousness-type double patenting rejection.

SUMMARY

Applicants respectfully submit that the above remarks clearly demonstrate the patentability of the claimed invention over the cited amendments and reference. Notice of Allowance is therefore respectfully requested at an early date.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Alan G. Towner", is written over the typed name.

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